

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION**

FOREST CONAN KINGCADE,)	
)	
Plaintiff,)	
)	
v.)	No. 1:11CV90 LMB
)	
DUNKLIN COUNTY JAIL, et al.)	
)	
Defendants.)	

MEMORANDUM AND ORDER

This matter is before the Court upon the motion of plaintiff for leave to commence this action without prepayment of the filing fee pursuant to 28 U.S.C. § 1915. Upon consideration of the financial information provided with the motion, the Court finds that plaintiff is financially unable to pay any portion of the filing fee. As a result, plaintiff will be granted leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. Additionally, the Court has reviewed the complaint and will dismiss it pursuant to 28 U.S.C. § 1915(e)(2)(B).

28 U.S.C. § 1915(e)

Pursuant to 28 U.S.C. § 1915(e)(2)(B), the Court must dismiss a complaint filed in forma pauperis if the action is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant who is immune from such relief. An action is frivolous if it “lacks an arguable basis in either law or

fact.” Neitzke v. Williams, 490 U.S. 319, 328 (1989). An action is malicious if it is undertaken for the purpose of harassing the named defendants and not for the purpose of vindicating a cognizable right. Spencer v. Rhodes, 656 F. Supp. 458, 461-63 (E.D.N.C. 1987), aff’d 826 F.2d 1059 (4th Cir. 1987).

To determine whether an action fails to state a claim upon which relief can be granted, the Court must engage in a two-step inquiry. First, the Court must identify the allegations in the complaint that are not entitled to the assumption of truth. Ashcroft v. Iqbal, 129 S. Ct. 1937, 1950-51 (2009). These include “legal conclusions” and “[t]hreadbare recitals of the elements of a cause of action [that are] supported by mere conclusory statements.” Id. at 1949. Second, the Court must determine whether the complaint states a plausible claim for relief. Id. at 1950-51. This is a “context-specific task that requires the reviewing court to draw on its judicial experience and common sense.” Id. at 1950. The plaintiff is required to plead facts that show more than the “mere possibility of misconduct.” Id. The Court must review the factual allegations in the complaint “to determine if they plausibly suggest an entitlement to relief.” Id. at 1951. When faced with alternative explanations for the alleged misconduct, the Court may exercise its judgment in determining whether plaintiff’s conclusion is the most plausible or whether it is more likely that no misconduct occurred. Id. at 1950, 51-52.

The Complaint

Plaintiff, a resident of Kennett, Missouri, brings this action pursuant to 42 U.S.C. § 1983 alleging violations of his civil rights. Plaintiff asserts that during his recent incarceration in Dunklin County Jail, Willie Moore, a correctional officer, punched and choked him for no apparent reason. Plaintiff names both Willie Moore and Dunklin County Jail as defendants in this action for monetary damages.

Discussion

Plaintiff's claim against the Dunklin County Jail is legally frivolous because the Jail is not a suable entity. Ketchum v. City of West Memphis, Ark., 974 F.2d 81, 82 (8th Cir. 1992) (departments or subdivisions of local government are "not juridical entities suable as such."); Catlett v. Jefferson County, 299 F. Supp. 2d 967, 968-69 (E.D. Mo. 2004). Similarly, plaintiff's claim against defendant Moore also fails at this time.

The complaint is silent as to whether defendant Willie Moore is being sued in his official or individual capacity. Where a "complaint is silent about the capacity in which [plaintiff] is suing defendant, [a district court must] interpret the complaint as including only official-capacity claims." Egerdahl v. Hibbing Community College, 72 F.3d 615, 619 (8th Cir.1995); Nix v. Norman, 879 F.2d 429, 431 (8th Cir. 1989).

Naming a government official in his official capacity is the equivalent of

naming the government entity that employs the official. To state a claim against Dunklin County, plaintiff must allege that a policy or custom of Dunklin County was responsible for the alleged constitutional violation. Monell v. Department of Social Services, 436 U.S. 658, 690-91 (1978). The instant complaint does not contain any allegations that a policy or custom of Dunklin County was responsible for the alleged violations of plaintiff's constitutional rights. As a result, the complaint fails to state a claim upon which relief can be granted.

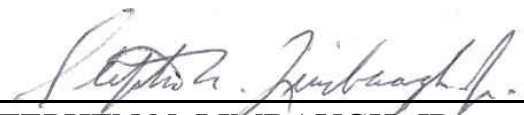
Accordingly,

IT IS HEREBY ORDERED that plaintiff's motion to proceed in forma pauperis [Doc. #2] is **GRANTED**.

IT IS FURTHER ORDERED that the Clerk shall not issue process or cause process to issue upon the complaint because the complaint is legally frivolous or fails to state a claim upon which relief can be granted, or both.

An appropriate Order of Dismissal shall accompany this Memorandum and Order.

Dated this 6th day of June, 2011.



STEPHEN N. LIMBAUGH, JR.
UNITED STATES DISTRICT JUDGE